

MEMORANDUM

SUBJECT: NSPS OOOOa Reconsideration Process – SAN 6616 “Policy” rulemaking

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Background and Timeline:

- *June 2016* - EPA issued the final NSPS OOOOa rule addressing air emissions of volatile organic compounds (VOC) and greenhouse gas emissions (GHG) for new Crude Oil and Natural Gas Facilities.
- *April 2017* - EPA announced it would grant petitions for reconsideration it had received on three specific issues (fugitive monitoring at low production wells, well-site pneumatic pump standards, and professional engineer certification requirement of closed vent system design capacity). EPA also committed to look broadly at the entire rule and potentially initiate reconsideration proceedings to suspend, revise, or rescind the rule.
- *November 2017* – Kickoff of reconsideration rulemaking workgroup, formed of OAQPS, OAP, OGC, OECA, OP, ORD and Regions 3, 5, 6 and 8.
- *December 2017* – OAR proposed to split this rulemaking into two parts:
 - Technical Issues (SAN 5719.8) – Tier 2 – scheduled for final publication June 2018
 - Topics relating to implementation, standards and monitoring
 - Policy Issues (SAN 6616)- Tier 1 – scheduled for final publication December 2018
 - Regulation of methane
 - Definition of oil and gas source category
- *December 15, 2017* – (SAN 6616) Early Guidance with the Administrator scheduled and workgroup members were invited to participate. On December 14, 2017, workgroup members were notified that the Early Guidance meeting was cancelled. The December 15th

meeting went forth as an “informational briefing” between the Administrator and OAR. The powerpoint slides used at the briefing were provided to the workgroup on February 7, 2018.

- *February 9 and 16, 2018* – (SAN 6616) Workgroup members were notified on February 1, 2018 that these dates had been scheduled for Early Guidance and Options Selection meetings, respectively. On February 8, 2018, workgroup members were notified that both meetings had been cancelled.
- *March 1, 2018* – Workgroup was notified that a meeting between the Administrator and OAR had indeed occurred on February 9, 2018, and so the December 15, 2017 and February 9, 2018 meetings were to be considered Early Guidance and Options Selection, respectively, for SAN 6616. Workgroup members were then provided with the briefing paper used for the February 9th meeting.

Concern: *EPA’s Action Development Process: Guidance for EPA Staff on Developing Quality Actions*¹ (“ADP Guidance”) is not being followed for SAN 6616, a Tier 1 rule. Workgroup members were not invited to participate in Early Guidance and Options Selection meetings nor the preparatory actions for each.

In describing the overview and purpose of the Action Development Process, the ADP Guidance states:

“...it is important for the EPA’s actions to be based on sound scientific, economic, legal and policy analyses and for the agency to involve the public throughout development. To equip rulewriters with the tools necessary to write a regulation, the EPA designed the ADP, a comprehensive process for developing actions, almost 30 years ago. At various intervals, the agency’s senior management and professional staff have reviewed, reinforced and strengthened these procedures.” (ADP Overview, p. 1)

“The ADP is designed to bring together a diverse group of professionals from offices throughout the agency who work collaboratively to develop and deliver actions that are based in sound science, promote economic efficiency, and are implementable and enforceable. It serves as a comprehensive framework to ensure the use of quality information to support EPA actions and an open process for action development. It also makes certain that scientific, economic and policy issues are adequately addressed at the appropriate stages in action development...” (ADP Overview, pp. 1-2)

“The ADP also relies on collaborative and collegial involvement at the staff level across the agency to ensure that actions are discussed and developed using all of the available and appropriate agency expertise. The ADP encourages a workgroup comprised of appropriate staff to share information and draft materials as a group.” (ADP Overview, p. 2)

¹ [HYPERLINK "<http://intranet.epa.gov/actiondp/documents/adp09-24-15.pdf>"]

The ADP Guidance gives an overview of the Early Guidance milestone in the rulemaking process, and states:

“For both Tier 1 and Tier 2 actions, the lead office should provide participating AAs/RAs with meaningful opportunities to contribute to Early Guidance decisions and should obtain agreement from participating offices on issues that affect them. The Early Guidance meeting facilitates this goal...The meeting involves staff members and senior managers from all participating offices and in establishing policy priorities and communicating expectations, analytic and others, for the workgroup. Senior managers should identify issues of significant concern, and the lead decision maker sets the priorities and general direction for continued development of the action.” (Stage 2, p. 4)

“...The lead office should invite AA/RAs from all offices participating in the workgroup and should provide a simultaneous notice to all the RSC representatives/RRCs and workgroup representatives of the participating offices....Other meetings held before the Early Guidance meeting that may result in a decision should involve the other workgroup members.” (Stage 2, pp. 4-5)

The ADP Guidance gives an overview of the Options Selection milestone in the rulemaking process, and states:

“Options Selection is the last formal step for senior management to provide input in the development process before the workgroup completes drafting of the action. At this point, the workgroup has usually completed its research, consulted with stakeholders, conducted analyses, completed peer review, identified issues, weighed the costs and benefits, considered the pros and cons, and assessed the overall feasibility of the options available...After completing those tasks, the workgroup is ready to present several possible options for each issue, and to the extent practicable, identify and discuss any options with workgroup consensus and provide recommendations that would achieve the desired outcome.” (Stage 2, pp. 9-10)

“Ideally, an Options Selection meeting should be held no later than six months before the action is scheduled for signature. While this ideal may not always be achievable, the principle remains the same: workgroups need enough time between selecting an option and preparing the final document for signature to appropriately analyze and document the selected option.” (Stage 2, p.10)

“The lead office should invite AA/RAs from all offices participating in the workgroup to the Options Selection meeting, and should provide a simultaneous notice to all the RSC representatives/RRCs and workgroup representatives of the participating offices.” (Stage 2, p. 10)

“To prepare for the Options Selection meeting, the lead office should:

- Hold a workgroup meeting to discuss the regulatory options and policies to consider at the Options Selection meeting.*
- Prepare a draft meeting briefing for workgroup review to gather other offices’ positions on the options and to identify any options with workgroup consensus. As with Early*

Guidance, the Options Selection briefing should be a collaborative effort capturing all participating offices' positions.

- *Prepare a final briefing package that outlines the options; provides available information on costs and benefits; and summarizes other offices' positions, any workgroup consensus on the options, and a brief summary of implementation issues and how the action will affect children's health and communities with environmental justice concerns, as appropriate. The lead office should include this package with the background information for the meeting.*
- *Prepare a summary of the views of stakeholders as a result of any stakeholder involvement or consultation processes. This can be either a separate document or part of the briefing materials.*
- *Schedule the Options Selection meeting.*
- *Distribute final background materials that lay out issues and options to be discussed preferably two weeks, but no later than one week, before the meeting*

Recommendation:

The ADP Guidance should be followed in order to:

- 1) allow Offices participating in the rulemaking action to have input on issues that affect them;
- 2) ensure that workgroup concerns are addressed prior to FAR;
- 3) ensure the transparency of the basis of decisions made during the rulemaking process in order to fulfill EPA's obligations under Section 307(d)(3) of the Clean Air Act; and
- 4) uphold the integrity of the rulemaking process.